



# ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು  
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೪ಎ Part - IVA	ಬೆಂಗಳೂರು, ಶುಕ್ರವಾರ, ೧೪, ಮಾರ್ಚ್, ೨೦೨೫(ಫಾಲ್ಗುಣ, ೨೩, ಶಕವರ್ಷ, ೧೯೪೬) BENGALURU, FRIDAY, 14, MARCH, 2025(PHALGUNA, 23, SHAKAVARSHA, 1946)	ಸಂ. ೧೫೩ No. 153
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PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT (ELECTIONS)

## NOTIFICATION

DPAR 15 CHUTHAA 2025, Bengaluru, Dated: 14.03.2025

## ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001

No:82/KT-LA/1/2023

Dated: 27<sup>th</sup> February, 2025  
8 Phalguna, 1946 (Saka)

## NOTIFICATION

No:82/KT-LA/1/2023 - In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment / order of the High Court of Karnataka, Bengaluru dated:19.12.2024 in the Election Petition No.1/2023.

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF DECEMBER, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM**

**ELECTION PETITION NO.1 OF 2023**

**BETWEEN**

N. H. SHIVASHANKAR REDDY,  
AGE: 69 YEARS, OCC: SOCIAL SERVICE,  
R/O H.NO.29, NAGASANDRA VILLAGE,  
TQ: GOURIBIDANUR,  
DIST: CHIKKABALLAPUR,  
KARNATAKA.

...PETITIONER

(BY SRI GANESH KUMAR R., ADVOCATE)

**AND**

K. H. PUTTASWAMY GOWDA,  
AGE: 69 YEARS, OCC: BUSINESS,  
R/O NO.1, WARD NO.19,  
COURT ROAD, MTC COLONY,  
GAURIBIDANURU TOWN-561208,  
DIST: CHIKKABALLAPUR,  
KARNATAKA.

...RESPONDENT

(BY SRI ROOPESA B., ADVOCATE)

THIS ELECTION PETITION IS FILED UNDER SECTIONS 80, 80-A, 81, 100 (1)(B) OF THE REPRESENTATION OF PEOPLE ACT, 1951, PRAYING TO, A) ALLOW THIS ELECTION PETITION BY DECLARING THE ELECTION OF THE RESPONDENT HEREIN AS VOID TO THE POST OF MEMBER OF KARNATAKA LEGISLATIVE ASSEMBLY TO THE GAURIBIDANURU ASSEMBLY CONSTITUENCY; AND B) DECLARE THAT THE RESPONDENT HEREIN AS COMMITTED CORRUPT PRACTICE UNDER SECTION 100(1)(B) OF R.P. ACT ETC.,

THIS ELECTION PETITION PERTAINING TO PRINCIPAL BENCH, BENGALURU HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.12.2024, THIS DAY AT KALABURAGI BENCH THROUGH VIDEO CONFERENCING, ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

**C.A.V. ORDER**

The captioned election petition is filed to declare the election of respondent herein to the post of Member of Karnataka Legislative Assembly to Gauribidanur Assembly Constituency as void on the ground that the respondent has indulged in corrupt practice under Section 100(1)(b) of the Representation of People Act, 1951 (for short, 'the RP Act').

2. Facts leading to the case are as under:

The petitioner and the respondent filed nomination papers pursuant to notice of election issued by the State on 13.04.2023. The subject matter of petition is in respect of Gauribidanur Assembly Constituency for the period 2023. The petitioner has challenged the declaration of respondent as a returned candidate on 13.05.2023. The challenge is primarily on the ground that the respondent has indulged in corrupt practice under Section 33A of the RP Act for non-disclosure of pending cases against him and therefore, a declaration is sought.

3. Learned counsel appearing for the petitioner reiterating the grounds urged in the election petition has vehemently argued and contended that disclosure of criminal case is mandatory as per Section 33A of the RP Act. He would submit that affidavit submitted in compliance with procedure provided under Section 33A of the RP Act read with Rule 4A and Form No.26 of the Conduct of Elections

Rules, 1961 (for short, 'the Rules'), the respondent was required to disclose the pendency of crime in Crime No.120/2018 for the offences punishable under Sections 406 and 420 of the Indian Penal Code. Citing omissions of Section 33B of the RP Act, as it was struck down by the Hon'ble Apex Court as ultra vires the Constitution in the case of ***People Union for Civil Liberties Vs. Union of India***<sup>1</sup>. He would contend that the requirements of disclosure of pending cases under Form No.26 of the Rules has undergone sea change from 10.10.2018. Taking this Court through Form No.26 of the Rules, the format as it existed in 2012, he would contend that only in those cases charges were framed and cognizance were taken, the candidate was required to disclose those relevant pending criminal cases in the affidavit that was required to be submitted under Form No.26 of the Rules. However, post judgment rendered by the Hon'ble Apex Court in the above cited judgment, it is argued that disclosure is not only limited to disclosure of criminal cases

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<sup>1</sup> ***AIR 2003 SC 2363***

where charges were framed or cognizance were taken but also requires disclosure of details in respect of all pending criminal cases irrespective of any stage.

4. He would further point out from the records that the respondent had the knowledge of pending case in Crime No.120/2018, on the file of Principal Senior Civil Judge and CJM, Bagalkot. This factual matrix is admitted by the respondent and therefore, non-disclosure clearly amounts to corrupt practice under Section 100(1) (b) of the RP Act and therefore, he would contend that this is a fit case where an election declaring the respondent as a returned candidate needs to be declared as void.

5. He would also lay emphasis on Rule 4A of the Rules to point out that earlier it was only related to conviction which later included filing of charge-sheet and then taking cognizance. Citing distinction between the requirements under Section 212 of the Code of Criminal Procedure, Form No.26 and the present Form No.26 of the Rules, it is argued that it has undergone substantial changes.

He has referred to Clause (5) of the Table in Form No.26 of the Rules passed on 10.10.2018. Referring to Form No.26 of the Rules, he would contend that candidate is mandatorily required to disclose all information. Taking this Court through Section 33A of the RP Act, he would also lay emphasis on the language employed under the above said Section. While reading the Section, he would point out that the candidate is required to disclose all information which is mandatory under the Act. Therefore, it point out that he is required to disclose all information apart from any information which is required to furnish under the RP Act.

6. While stressing on word apart, he would point out that pendency of case in Crime No.120/2018 for the offences punishable under Sections 406 and 420 of IPC clearly amounts to corrupt practice and therefore, warrants interference at the hands of this Court.

7. Referring to Clause (5) of Form No.26 of the Rules amended in 2018, he would point out that the candidate in the contest election, cannot get away from the mandate

indicated in the above said Clause which imposes a duty on the candidate to disclose whether criminal cases are pending or not, while in 2012 format under Form No.26 of the Rules, a candidate was only required to disclose in the event charge is framed in criminal proceedings. Therefore, highlighting this distinction, he would vehemently argue and contend that the respondent is guilty of withholding crucial information which clearly contravenes Section 33A of the RP Act and therefore, this is a clear case of corrupt practice.

8. He would also point out that 'B' report is not defined under Cr.P.C. However citing the following judgments;

(i) ***Kajal Naresh Kumar Vs. Union of India and others in W.P.No.20850/2022 dated 16.11.2022.***

(ii) ***Dr. Ravikumar Vs. Mrs. K.M.C. Vasantha and Another reported in ILR 2018 KAR 1725.***



it is vehemently argued that irrespective of filing of 'B' report, FIR continues till Magistrate accepts 'B' report. Reliance is also placed on the judgment rendered by the Co-ordinate Bench in the case of ***Mudiyappa Vs. Basavaraj and others in W.P.No.107291/2023 dated 10.01.2024.*** He would further point out that the respondent admits filing of FIR and also acknowledges his knowledge of filing of 'B' report. On these set of grounds, he would contend that the prayer sought in the election petition may be allowed and accordingly, this Court may declare the election of respondent to the post of Karnataka Legislative Assembly to Gauribidanur Assembly Constituency as null and void as per Section 100(1) (b) of the RP Act.

9. *Per contra*, learned Senior Counsel appearing for the respondents however has countered the contentions raised by the learned counsel appearing for the petitioner primarily referring to the prayer sought in the election petition. Learned Senior Counsel would vehemently argue and contend that what amounts to corrupt practice is clearly

defined under Section 123 of the RP Act. He would also point out that the grounds to declare election as void is clearly contemplated under Section 100 of the RP Act. He would further point out that Section 100 (1)(b) of the RP Act which relates to corrupt practice is the relevant provision. Citing these two provisions, he would then requests this Court to examine the wordings used in Section 33A of RP Act. Referring to Section 33A of RP Act, he would point out that there is absolutely no prayer alleging violation of Section 33A of RP Act in prayer sought. While taking this Court through the prayer sought in the election petition, he would point out that the challenge in the election is sought primarily on the ground that the respondent has indulged in corrupt practice and therefore, declaration is sought to declare the election as void solely on that count. When coming back to Section 100 of the RP Act, he would vehemently argue and contend that the said Section clearly contemplates that when election can be declared as void. An election can be declared as void if the Court is of the opinion that the candidate has indulged in

corrupt practice. What amounts to corrupt practice is clearly defined under Section 123 of the RP Act. On reading the entire election petition, none of the ingredients found in Section 123 of the RP Act are made out in the election petition.

10. In the alternate, learned Senior Counsel would point out that non-disclosure of FIR, even if accepted for the sake of argument, at the most attracts penalty under Section 125A of the RP Act. Learned Senior counsel would take this Court through Section 125A(i) of the RP Act and contend that there is an independent mechanism in the event the petitioner is able to substantiate that there is no full disclosure as mandatory under Form No.26 under Rule 4A of the Rules. Learned Senior Counsel would then take this Court through various provisions of the Code of Criminal Procedure, more particularly the definition of police reports as defined under Section 2(d) of Cr.P.C. He has also taken this Court through provisions of Sections 154, 156, 157, 173 and 190 of the Code of Criminal Procedure.

11. Having heard the learned counsel on record exhaustively, this Court proceeds to record its reasons on the issues framed by this Court. The issues are extracted as under:

- "1) *Whether petitioner proves that respondent has violated sub-clause (1) of Section 33(A) of the Representation of the People Act, 1951 by not disclosing the registration of crime against him in Crime No.120/2018 and this amounts to corrupt practice as defined under sub-clause (1) of Section 33(A) of the Representation of the People Act, 1951?*
- 2) *Whether petitioner proves that respondent has committed "corrupt practice" of undue influence by withholding information as to criminal proceedings and whether he is able to prove that merely because Investigation Officer has submitted 'B' report that in itself will not conclude the criminal proceedings and will not exempt a candidate from disclosing criminal proceedings in terms of Section 33(a) of the Act?*
- 3) *Whether petitioner has locus standi to file election petition and to seek declaration that respondent's election is void?"*

**Finding on Issue Nos.1 and 2:**

12. Before this Court delves into the matter further, deems it fit to cull out the prayer sought in the election petition which reads as under:

- "a) allow this Election Petition by declaring the election of the Respondent herein as void to the post of Member of Karnataka Legislative Assembly to the Gauribidanuru Assembly Constituency; and*
- b) declare that the respondent herein has committed corrupt practice under section 100 (1) (b) of R P Act.*
- c) Any other relief that this Hon'ble Court may deem fit in the facts and circumstances of the case."*

13. This Court also deems it fit to take cognizance of Form No.26 issued in 2012 in compliance of Rule 4A of the Rules. The relevant portion is as under:

***"(5) I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which***

**a charge(s) has/have been framed by the Court(s) or competent jurisdiction.**

**If the deponent is accused of any such offence(s) he shall furnish the following information-**

*(i) The following case(s) is/are pending against me in which charges have been framed by the Court for an offence punishable with imprisonment for two years or more-*

<i>(a) Case/First Information Report No./Nos. together with complete details of Police Station/District/State concerned</i>	
<i>(b) Section(s) of the Act(s) concerned and short description of the offence(s) for which charged.</i>	
<i>(c) Name of the Court, Case No. and date of order taking cognizance</i>	
<i>(d) Court(s) which framed the charge(s)</i>	
<i>(e) Date(s) on which the charge(s) was/were framed</i>	
<i>(f) Whether all or any of the proceedings(s) have been stayed by any Court(s) of competent jurisdiction.</i>	

*(ii) The following case(s) is/are pending against me in which cognizance has been taken by the Court other than the cases mentioned in Item (i) above-*

<i>(a) Name of the Court, Case No. and date or order taking cognizance.</i>	
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(b) The details of cases where the Court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken."	
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14. The Hon'ble Apex Court struck down Section 33B of the RP Act as ultra vires the Constitution. Section 33B of the RP Act exempted the candidate from disclosing any information which was not required to be disclosed or furnished under the RP Act or Rules made thereunder. Pursuant to the law laid down by the Apex Court in the case of ***People Union for Civil Liberties*** *supra*, the authorities aligning with the judgment rendered by the Hon'ble Apex Court have come up with Form No.26 of the Rules with effect from 10.10.2018. The relevant portion is as under:

***"(5) Pending criminal cases***

***(i) I declare that there is no pending criminal case against me. (Tick this alternative if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative (ii) below)***

**OR**

***(ii) The following criminal cases are pending against me:***

*(If there are pending criminal cases against the candidate, then tick this alternative and score off alternative (i) above, and give details of all pending cases in the Table below)*

*Table*

<i>(a)</i>	<i>FIR No. with name and address of Police Station concerned</i>			
<i>(b)</i>	<i>Case No. with Name of the Court</i>			
<i>(c)</i>	<i>Section(s) of concerned Acts/Codes involved (give no. of the Section, e.g. Section.....of IPC, etc.).</i>			
<i>(d)</i>	<i>Brief description of offence</i>			
<i>(e)</i>	<i>Whether charges have been framed (mention YES or NO)</i>			
<i>(f)</i>	<i>If answer against (e) above is YES, then give the date on which charges were framed</i>			
<i>(g)</i>	<i>Whether any Appeal/Application for revision has been filed against the proceedings (Mention YES or NO)</i>			



15. Section 33A of the RP Act reads as under:

**"[33A. Right to information.—**(1)*A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—*

- (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;*
- (ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more.*

*(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).*

*(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by*

*affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]”.*

16. Section 123 of RP Act reads as under:

**"123. Corrupt practices.—** *The following shall be deemed to be corrupt practices for the purposes of this Act:—*

*(1) "Bribery", that is to say—*

*(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—*

*(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or*

*(b) an elector to vote or refrain from voting at an election, or as a reward to—*

*(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or*

*(ii) an elector for having voted or refrained from voting;*

*(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—*

*(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or*

*(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.*

*Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.*

*(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other*

*person with the consent of the candidate or his election agent, with the free exercise of any electoral right:*

*Provided that—*

*(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—*

*(i) threatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or*

*(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,*

*shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;*

*(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right,*

*shall not be deemed to be interference within the meaning of this clause.*

*(3) The appeal by a candidate or his agent or by any other person with the consent of a candidates or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:*

*Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.*

*(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.*

*(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.*

*Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).*

*(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.*

*(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent or*

*the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:*

*Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:*

*Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.*

*Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.*

*(6) The incurring or authorizing of expenditure in contravention of section 77.*

*(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—*

*(a) gazetted officers;*

*(b) stipendiary judges and magistrates;*

*(c) members of the armed forces of the Union;*

*(d) members of the police forces; (e) excise officers;*

*(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and*



*(g) such other class of persons in the service of the Government as may be prescribed:*

*Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.*

*(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.*

*(8) Booth capturing by a candidate or his agent or other person.*

*Explanation.—(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an*

*agent in connection with the election with the consent of the candidate.*

*(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.*

*(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—*

*(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and*

*(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such*

*person ceased to be in such service with effect from the said date.*

*(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A."*

17. Section 100 (1) (b) of R.P Act reads as under:

***100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—***  
*(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or*

18. The present election petition seeks to declare the election of the respondent to the Karnataka Legislative Assembly (Gauribidanur Assembly Constituency) null and void under Section 100(1)(b) of the Representation of the People Act, 1951 ("RP Act") on the ground of corrupt practices. The petitioner contends that the respondent failed to disclose the filing of a 'B Report' in the requisite Form

No.26, thereby alleging non-compliance with Section 33A of the RP Act.

19. Section 123 of the RP Act enumerates what constitutes "corrupt practices." Any act to declare an election void under Section 100(1)(b) must specifically fall within the definition of corrupt practices as laid down in Section 123. Section 100(1)(b) applies when corrupt practices, as defined under Section 123, are established against a candidate.

20. Section 33A mandates candidates to furnish details of pending criminal cases or convictions in Form No.26 under Rule 4A of the Conduct of Election Rules, 1961. Section 125A prescribes a specific penalty for any omission or false declaration in Form No.26. This penalty includes fine or imprisonment, but it does not classify such omission as "corrupt practice" under Section 123.

21. A 'B Report' filed under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) indicates that, upon investigation, the police have not found sufficient evidence to

proceed with prosecution. The filing of a 'B Report' does not imply the existence of a pending case or conviction, as required for disclosure under Section 33A. It merely reflects the closure of an FIR unless the Magistrate rejects the report.

22. Consequently, until the Magistrate takes cognizance or directs further investigation, the 'B Report' does not translate into an actionable proceeding requiring mandatory disclosure in Form No.26.

23. It is vehemently argued that irrespective of the filing of a 'B Report,' the FIR continues until the Magistrate accepts the 'B Report.' Reliance is placed on ***Mudiyappa Vs. Basavaraj and Others (W.P.No.107291/2023, dated 10.01.2024)***. However, this argument is misplaced.

24. The legal position is clear. while an FIR initiates the process of investigation, the submission of a 'B Report' under Section 173(2) Cr.P.C. concludes the investigation unless the Magistrate directs further action. In the absence

of any further direction from the Magistrate, the 'B Report' effectively closes the FIR. Hence, there is no continuing criminal proceeding that mandates disclosure under Section 33A.

25. The respondent's admission of knowledge regarding the FIR and 'B Report' does not alter the legal position. Mere knowledge of an FIR does not amount to a pending case requiring mandatory disclosure unless the Magistrate rejects the 'B Report' and takes cognizance. Therefore, the argument that the FIR subsists irrespective of the 'B Report' lacks legal merit and cannot form the basis to declare the election void under Section 100(1)(b).

26. Assuming for the sake of argument that the non-disclosure of an FIR or the 'B Report' amounts to a failure under Section 33A, the appropriate remedy lies under Section 125A of the RP Act. Section 125A(i) clearly provides for a fine or imprisonment as a penalty for failing to disclose information in Form No.26. Importantly, this provision

operates independently of the provisions relating to corrupt practices.

27. Therefore, non-disclosure does not automatically attract the severe consequence of declaring an election void under Section 100(1)(b).

28. Reliance is placed on the decision of the Co-ordinate Bench in ***Mudiyappa Vs. Basavaraj and Others(W.P.No.107291/2023, dated 10.01.2024)***, wherein it was vehemently argued that an FIR continues only until the Magistrate accepts the 'B Report.' However, this judgment does not establish that a concluded FIR (via a 'B Report') qualifies as a pending proceeding under Section 33A.

29. Corrupt practices, as defined under Section 123, involve acts such as bribery, undue influence, impersonation, or false statements. These are substantive offenses with significant consequences. Non-disclosure of information, even if proven, amounts at most to a procedural lapse

punishable under Section 125A but does not constitute corrupt practice.

30. The grounds for declaring an election void are strictly circumscribed by Section 100, which must be read in harmony with Sections 123 and 33A.

31. Based on the above, non-disclosure of the 'B Report,' even if admitted, does not amount to corrupt practice under Section 123 of the RP Act. At most, it could attract a penalty under Section 125A, which provides an independent mechanism for addressing such omissions.

32. The petitioner's reliance on the continuance of the FIR irrespective of the 'B Report' is legally unsustainable. The 'B Report' effectively concludes the FIR unless the Magistrate takes further action. Consequently, the prayer to declare the election null and void under Section 100(1)(b) cannot be entertained, and the election petition deserves to be dismissed for lack of merit.



33. Accordingly, point Nos.1 and 2 are answered in the Negative.

**Finding on issue No.3:-**

34. The petitioner, having contested the election in question, undoubtedly has *locus standi* to maintain the election petition and seek the declaration that the respondent's election is void. Under the provisions of the Representation of the People Act, 1951 (or the relevant statutory framework governing elections), an election petition can be filed by any candidate who contested the election. The term "candidate" is defined to include any person who has filed a valid nomination and participated in the electoral process. In the present case, the petitioner satisfies these criteria, as evidenced by their participation in the election and the subsequent declaration of results. The petitioner, being an aggrieved party directly affected by the outcome of the election, possesses a legitimate legal interest in challenging its validity. This right is fundamental to ensuring the integrity of the democratic process and

addressing any allegations of irregularities or illegality in the conduct of the election. Therefore, the respondent's contention that the petitioner lacks *locus standi* is untenable, and the issue is answered in the affirmative.

35. **Conclusions:**

(i) Under criminal jurisprudence, the filing of a 'B Report' under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) signifies the non-existence of sufficient evidence to prosecute the accused. This conclusion, unless rejected by the Magistrate, effectively closes the matter and absolves the accused from the label of a "pending case" or "conviction." In the context of the Representation of the People Act, 1951 (R.P. Act), this has significant implications for the interpretation and application of Section 33A.

(ii) Section 33A mandates that candidates must furnish information regarding pending criminal cases or convictions in Form No.26 under Rule 4A of the Conduct of Election Rules, 1961. However, the object of this provision is to

ensure transparency by requiring candidates to disclose cases that could potentially affect public confidence in their integrity or suitability for office. The term "any other information" employed in Section 33A cannot be interpreted so broadly as to include disclosures that fall outside this legislative intent. The filing of a 'B Report,' which confirms the absence of sufficient grounds for prosecution, does not amount to a pending criminal case or a conviction.

(iii) Similarly, Section 123, which defines "corrupt practices," and Section 100(1)(b), which provides grounds for declaring an election void due to corrupt practices, are aligned with ensuring electoral fairness and integrity. These provisions do not envisage the inclusion of closed investigations, such as those resulting in a 'B Report,' as a basis for disqualification or disclosure.

(iv) The requirement to disclose under Section 33A is limited to material that aligns with its legislative objective ensuring that voters are informed of genuine legal

encumbrances against a candidate. Including details of a 'B Report' would go beyond this purpose and impose an unwarranted burden on candidates, as the filing of a 'B Report' signifies that no actionable case exists against them. Therefore, candidates are not obligated to disclose the filing of a 'B Report,' as it does not fulfill the criteria of "any other information" under Section 33A of the R.P. Act.

(v) The prayer in the election petition seeks to declare the election of the respondent to the post of Member of the Karnataka Legislative Assembly from the Gauribidanur Assembly Constituency as void under Section 100(1)(b) of the Representation of the People Act, 1951, on the ground of corrupt practice. However, for such a declaration to be granted, it is imperative that the petitioner substantiate the allegations with cogent and credible material evidence demonstrating that the respondent or their election agent, or any other person with their consent, engaged in corrupt practices as defined under Section 123 of the Act. In the present case, no material evidence has been placed before

the Court to establish that the respondent indulged in or consented to any acts constituting corrupt practices, such as bribery, undue influence, or improper use of electoral resources. The mere assertion of corrupt practice, without corroborating evidence or concrete proof, fails to meet the standard of proof required under the law. Therefore, the prayer to declare the election as null and void under Section 100(1)(b) is unsustainable and cannot be granted in the absence of substantiating material or evidence supporting the allegations.

(vi) The petitioner has relied on Clause (5) in Form No. 26 of the Conduct of Election Rules, 1961, as amended on 10.10.2018, which mandates that a candidate must declare whether any criminal cases are pending against them. However, in the present case, the Investigating Officer has filed a 'B Report' under Section 173 of the Code of Criminal Procedure, 1973, indicating that upon investigation, there was no sufficient evidence to prosecute the respondent. The filing of a 'B Report' signifies the closure of the criminal

proceedings unless the Magistrate rejects the report, and it does not amount to a "pending case" as envisaged under Clause (5) of Form No. 26. Consequently, the respondent was not obligated to disclose the filing of the 'B Report,' as it does not meet the criteria of a pending criminal case. Non-disclosure of the filing of a 'B Report' cannot, therefore, be construed as a false declaration or suppression of material facts, nor does it amount to corrupt practice under the Representation of the People Act, 1951. The legislative intent behind the amendment to Form No.26 is to ensure transparency in cases where candidates are actively facing prosecution or are convicted, not to include instances where investigations have concluded with a finding of no actionable evidence. Hence, the respondent's actions do not fall within the ambit of corrupt practices, and the petitioner's reliance on Clause (5) of Form No.26 is misplaced in the absence of pending criminal charges.

36. For the reasons stated above, the petitioner has failed to establish any grounds under Section 100(1)(b) of

the Representation of the People Act, 1951, that would warrant the declaration of the respondent's election as void. The alleged non-disclosure of the 'B Report,' even if accepted, does not amount to corrupt practice under Section 123 and, at most, attracts penalties under Section 125A. Furthermore, the petitioner's arguments regarding the continuance of the FIR after the filing of the 'B Report' are legally unsustainable.

37. Accordingly, the Election Petition is dismissed. No costs.

**SD/-**  
**(SACHIN SHANKAR MAGADUM)**  
**JUDGE**

RSP  
List No.: 19 SI No.: 1  
CT-SW

## **ANNEXURES**

### **LIST OF WITNESSES EXAMINED ON BEHALF OF PETITIONER**

PW.1 - Sri. N.H.Shivashankar Reddy

### **LIST OF EXHIBITS MARKED ON BEHALF OF PETITIONER**

Ex.P-1: Certified copy of notice of Election (Form No.1)

Ex.P-2: Certified copy of Form No.26 sworn on 16.04.2023 submitted by  
the respondent K.H.Puttaswamy Gowda

Ex.P-2(a): English translated copy of Form No.26 sworn on 16.04.2023  
submitted by respondent K.H.Puttaswamy Gowda

Ex.P-3: Certified copy of Form No.26 sworn on 19.04.2023 submitted by  
the respondent K.H.Puttaswamy Gowda

Ex.P-3(a): Typed copy of Form No.26 sworn on 19.04.2023 submitted  
by the respondent K.H.Puttaswamy Gowda

Ex.P-3(b): English translated copy of Form No.26 sworn on 19.04.2023  
submitted by the respondent K.H.Puttaswamy Gowda

Ex.P-4: Certified copy of list of contesting candidates to the 139 -  
Gouribidanuru Assembly Constituency (Form No.7A)

Ex.P-5: Certified copy of certificate of Election of returned candidate  
(Form No.22)

Ex.P-5(a): Translated copy of certificate of Election of returned  
candidate (Form No.22)

Ex.P-6: Certified copy of FIR No.120/2018 dated 20.04.2018 filed  
against the respondent at Navanagar Police Station, Bagalkot

Ex.P-6(a): Translated copy of FIR No.120/2018 dated 20.04.2018 filed  
against the respondent at Navanagar Police Station, Bagalkot

Ex.P-7: Certified copy of letter dated 06.08.2018 written by the  
respondent to the PSI Navanagar Police Station, Bagalkot



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Ex.P-8: Certified copy of letter dated 10.08.2018 written by the  
respondent to the PSI Navanagar Police Station, Bagalkot

Ex.P-9: Certified copy of order sheet in BGK (N) PS CR.No.120/2018

Ex.P-9(a): Typed copy of relevant portion of order sheet in BGK (N) PS  
CR.No.120/2018

Ex.P-10: Certified copy of the order dated 18.10.2022 passed in  
Criminal Petition No.4205/2022 by the High Court of  
Karnataka at Bengaluru

**LIST OF WITNESSES EXAMINED ON BEHALF OF RESPONDENT**

RW.1 - Sri. K.H.Puttaswamy Gowda

**LIST OF EXHIBITS MARKED ON BEHALF OF RESPONDENT**

Ex.R-1: Certified copy of Form No.2B of respondent

**SD/-  
(SACHIN SHANKAR MAGADUM)  
JUDGE**

RSP

By Order

**(B C PATRA)**  
SECRETARY  
ELECTION COMMISSION OF INDIA

**(MADHU A.C)**  
Assistant Chief Electoral Officer  
& E/o Under Secretary to Government  
D.P.A.R (Elections)